United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

Original Affidavit of Mailing

74-1429

To be argued by
PAUL B. BERGMAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1429

UNITED STATES OF AMERICA,

Appellee,

—against—

CLARENCE JACKSON,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1429

UNITED STATES OF AMERICA,

Appellee,

—against—

CLARENCE JACKSON,

Appellant.

BRIEF FOR THE APPELLEE

Preliminary Statement

Clarence Jackson appeals from a judgment of the United States District Court for the Eastern District of New York (Bartels, *J.*) entered March 29, 1974, convicting him, following a jury trial, of violating Title 18, United States Code, Section 1623, in that he knowingly and intentionally made a false material declaration before a special grand jury on December 13, 1972. The appellant was sentenced to a prison term of three years. He has been released on bail pending appeal.

The issues on this appeal are: (1) Whether the Government failed to establish that the false declaration was material to the investigation being conducted by the special grand jury; (2) whether the court erred in preventing defense counsel from introducing additional grand jury testimony of appellant before the special grand jury; (3) whether the prosecutor's summation was improper; and (4) whether the imposition of a three year term of imprisonment was excessive.

Statement of the Case

1. The Aborted Heroin Sale

On May 23, 1972, John Ali, an undercover narcotics officer, met appellant through an informant's introduction. That first meeting took place in the vicinity of 146th Street and 8th Avenue in Manhattan. They spoke of heroin and, eventually, appellant offered to sell to Ali a kilogram of the drug for $27,500. Appellant assured Ali that the heroin was "dynamite" coming as it did "directly from the Italians," and that it could be diluted seven times (36, 39).* Arrangements were made for a meeting the next day (35-36). Neither drugs nor money was passed.

At 9:00 o'clock in the evening of the next day, Ali went to a bar—the Flash Inn—and waited for appellant. Some ten minutes later, appellant arrived accompanied by an unidentified male companion (37-38).** Appellant asked Ali if he was "ready to do business." Ali said, "yes" (38). After some drinks were ordered, appellant went to make a telephone call from a phone located in the bar. When appellant was finished, he called to Ali to join him and the two men entered the bathroom of the Flash Inn. Each then confirmed to the other that he was ready, willing, and able to complete the sale (39, 41).

Appellant and Ali then left the Flash Inn and made arrangements to meet in a short while at a park at 150th Street and Bradhurst Avenue where the sale was to take place (42, 75). They reconvened at 9:30 P.M. around a cement table at the park. Once more, appellant assured himself that Ali had the money. Thus assured, he insisted that Ali give him the sum prior to delivery. Ali agreed

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* Numbers in parentheses refer to pages of the trial transcript.

** This was the first meeting they had on May 24 (78-80). Appellant arrived at the Flash Inn in a silver gray Pontiac along with the unidentified male (85-86).

and a further meeting was arranged in the Loew's theater at 125th Street. Appellant stated that he would be there and that "his man" would have the "stuff" (42-46). When Ali arrived at the Loew's theater, however, appellant was not present and "his man," though there, did not have the heroin (48-49, 88).*

Thereafter, Ali proceeded to the Gold Lounge at 7th Avenue between 123rd and 124th Streets where he met with appellant. From there, the two went to a fifth location of the evening, a telephone booth at 125th Street and 7th Avenue (53) and the money was returned to Ali (70).** Ali never received the heroin nor apparently, saw it (70, 72).

2. The Grand Jury Investigation

On December 13, 1972—some seven months later—appellant testified before a special grand jury under a grant of immunity. Appellant was a witness before the grand jury in connection with its investigation of narcotics trafficking. The indictment herein was based upon a series of questions and answers concerning his meeting with officer Ali at the Flash Inn—a meeting which he denied altogether.

In the main, the questioning of appellant was generalized. It concerned appellant's various residences, family relationships and other matters such as his education, acquaintances, employment and assets (G.J. 7-100). Indeed, first mention of the aborted heroin transaction came in the context of the general inquiry (G.J. 26-27). In the course of the questioning, appellant denied that he

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* No evidence at the trial was introduced to show that the person who met Ali at the theater was the same person who accompanied appellant into the Flash Inn; nor was evidence introduced to show that they were not the same.

** At the time of this telephone booth meeting, it was already May 25 (70).

received income from narcotic transactions (G.J. 38), although he admitted that he once did (G.J. 69-72). Nevertheless, when appellant's admitted prior drug activities were pursued by the Assistant United States Attorney, appellant could not remember his sources other than his father.*

Appellant's grand jury version of the aborted drug negotiations of May 23, 24 and 25 coincided in some respects, with the facts as then known. In contrast to his inability to remember the names of people—other than his father—with whom he dealt in narcotics, appellant volunteered that Theodis Williams ("Teddy") was the person who had "approached [him] with the money" in May (G.J. 56-57).**

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* The essential testimony was as follows:

Q. But you did make $50, $100, $1,000, $2,000, $5,000, $20,000? A. I don't remember.

Q. Did you get your narcotics—who did you get your— A. I had got some from my father. Whoever I saw on the street.

Q. Just your father? A. Whoever I seen on the street.

Q. Who else would you have seen on the street other than your father? A. No telling.

Q. Well, let's see if we can tell. A. Okay, go ahead.

Q. Can you remember at all who you might have bought drugs from other than your father? A. No, I don't.

Q. Did you buy drugs from anybody other than your father? A. (No response.)

Q. Just walk up on Bridgeport to any black or white man and say "hey, I want five two dollar bags and I want to sell it for $60"? A. You come to Connecticut—you come to New York to buy on the street.

Q. Who did you buy in New York when you came from Connecticut? A. I don't remember. I never bought.

Q. Who did buy? A. I give my father, whoever, the money and let them go buy it.

Q. Is your father still up in Connecticut? A. Yes.

Q. If we were to bring your father down here, do you think he could tell us who you bought it from? A. He wouldn't remember (G.J. 72-73).

** At the trial, it was defense counsel who advised the Court that Teddy was the informant (112).

Appellant—who was not to testify at his trial—related to the grand jury that he had taken the money from Teddy's "man" (Ali) with the view towards keeping it without delivering the drugs (G.J. 26). He changed his mind, however, when his brother-in-law, Henry Blackshear, told him that Teddy was "pretty dangerous" (G.J. 26-27). Appellant fully testified to the locale of all of the meetings with Ali; all except two. Thus, he conceded the first meeting of May 23rd at 146th Street and 8th Avenue (G.J. 103); he conceded the third meeting at the park (G.J. 103-104); he conceded that he directed Ali to meet him in the Loew's theater and that he never appeared, but that he sent his brother-in-law (G.J. 109-110; 112-113); and he conceded the final meeting when he returned the money (G.J. 114). Yet, appellant denied *any* party at the Flash Inn (G.J. 106-108, 122), and any meeting in front of the Gold Lounge (G.J. 114-115). Thus, while freely admitting the meetings which were held in public places, appellant cut off, by his denials, any further inquiries about the two bars, one of which had provided the seclusiveness for his negotiations with Ali.

3. The Trial

The sole issue at the trial was appellant's intent. There was no issue as to the falsity of his testimony. Thus, at the outset, defense counsel told the jury that amidst all the questioning in the Grand Jury appellant simply hadn't remembered the discussions at the Flash Inn (15-16). Indeed, appellant offered, in front of the jury, to stipulate to the testimony of Officer Ali; a stipulation rejected by the Government (31). Moreover, when defense counsel further offered "to stipulate to the Government's case," the Assistant United States Attorney, inexplicably, refused and began calling the Government's witnesses (34). Those witnesses (Officer Ali and three surveillance agents) testified to the facts of the case as set forth hereinbefore (*supra*

at pp. 2-3); and presumably, the facts which appellant was prepared to concede.*

The objective facts of the case were, necessarily, complemented by appellant's false testimony in the grand jury. Thus, at the opening of the Government's case, the Assistant United States Attorney read those portions of the appellant's grand jury testimony which were alleged to be false (23-25, 27). Because the false declarations in the indictment bracketed a substantial portion of appellant's grand jury testimony, defense counsel greeted favorably the Court's suggestion that he, counsel, would read the intervening portion (26).**

Thereafter, when the Assistant United States Attorney objected to such a reading during the Government's direct case, it was agreed, with defense counsel's full consent, that the defense reading of the intervening portion, or any segment of that portion, would await the defense case (28-31).***

Nevertheless, defense counsel sought to inject appellant's other testimony before the grand jury, during his cross-examination of Officer Ali, by the use of an improper question (63). Objection was sustained, the Court stating:

> I am not going to let this case be confused. I am going to sustain the objection. You can bring him back later (64).

---

* In cross-examining the Government's witnesses, defense counsel simply sought to highlight the central notion of the defense—the fallibility of human recollection—by showing that each Government witness had prepared or reviewed memoranda of the events they participated in or observed.

** The excised portion of the grand jury testimony begins at page 108, line 5 and ends at page 122, line 8. It deals with the other meeting places such as the park, the theater and the street corner.

*** There was no discussion of any other grand jury testimony except that which appeared between the two series of false declarations.

After the Government rested its case, defense counsel offered, as evidence, two segments of the transcript of the grand jury proceedings; i.e., page 102, line 16, through page 120, line 2, and page 122, line 9 through line 24 (109-110). During and following an extensive colloquy (110-126), the District Court denied the offer. The Court concluded:

> To tell you the truth I think it would be bad for you but it doesn't even modify this.
>
> I don't want it to come in because of confusion. I don't think it helps your client. I think it just confuses the entire issue and could be quite detrimental.
>
> It is a simple issue: Did he or did he not say he was in the Flash Inn at that time (126).

At a later point, the Court stated:

> You see, Mr. Hoffman, if the rest of this Grand Jury testimony would indicate that the statements of Mr. Jackson were not false when read in the context of the other testimony then of course it should come in. However, that is not what it shows. It only shows as to other items that he was telling the truth but that is irrelevant (128).*

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* When defense counsel persisted at a later time, the Court's position remained unchanged (139-140).

ARGUMENT

POINT I

Appellant's false denials of narcotics negotiations in the Flash Inn involved a material matter before the grand jury.

Appellant contends that it was immaterial to the grand jury's inquiry to learn from him, why the Flash Inn had been chosen as a place for negotiations. He asks, rhetorically: ". . . of what probative value was the testimony concerning the Flash Inn?" The Government believes that it was material for the grand jury to learn about private establishments which offer narcotics dealers the kind of shelter or security which they need to carry on narcotics trafficking.

The materiality of a false declaration is a question of law and not one of fact. *United States* v. *Alu*, 246 F.2d 29, 32 (2d Cir. 1957); *United States* v. *McFarland*, 371 F.2d 701, 703 n. 3 (2d Cir. 1966), *cert. denied*, 387 U.S. 906 (1967); *United States* v. *Marchisio*, 344 F.2d 653, 665 (2d Cir. 1965). The standard, in proceedings before the grand jury, as stated in *Carroll* v. *United States*, 16 F.2d 951, 953 (2d Cir.), *cert. denied*, 273 U.S. 763 (1927) is: ". . . whether the false testimony has a natural effect or tendency to influence, impede, or dissuade the grand jury from pursuing its investigation . . ." See also, *United States* v. *Stone*, 429 F.2d 138, 140 (2d Cir. 1970); and *United States* v. *Mancuso*, 485 F.2d 275, 280 n. 16 (2d Cir. 1973) and cases cited therein.*

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* In situations where the scope of inquiry is narrower than that of a grand jury, i.e., *United States* v. *Freedman*, 445 F.2d 1220, 1227 (2d Cir. 1971) (SEC investigation as to a particular

[Footnote continued on following page]

In the case at bar, the grand jury was properly conducting a broad scale investigation into narcotics trafficking. Such an investigation would properly include ascertaining not only the persons most responsible for the influx of narcotics, but also the means and methods by which narcotics distribution is accomplished. Appellant had, by his prior dealings with narcotics agents, shown himself to be at least familiar with, if not intimately aware of and adept at the business. The only private locale—the Flash Inn—in which he had conducted business with Office Ali was necessarily a material aspect of the grand jury's inquiry. Yet, his denial of ever having transacted business in the Flash Inn curtailed further inquiries concerning his knowledge of the ownership or management of that bar; individuals who frequented the bar; or other narcotics transactions which took place there during May of 1972. In sum, the prosecutor was precluded from questioning appellant as to the choice of the Flash Inn as a meeting place.

Moreover, in addition to his denials concerning the Flash Inn, appellant also falsely denied that he had ever told Ali that his source was "the Italians" and that he "could handle any amount of drugs" that were wanted. Surely, those false denials were, as appellant concedes in his brief, ". . . essential to a most important phase of the Grand

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corporation); *United States* v. *Birrell*, 470 F.2d 113, 115 n. 1 (2d Cir. 1972) (application to proceed *in forma pauperis*), this Court has additionally required, as part of the test for materiality, ". . . that a truthful answer would have been of sufficient probative importance to the inquiry so that, as a minimum, further fruitful investigation would have occurred." Whether this more stringent standard (if so intended), upon which appellant relies, ought to be engrafted on the *Carroll* test for grand jury inquiries, has not been settled. See discussion in *United States* v. *Mancuso*, *supra*, 485 F.2d at 281 n. 17. In all events, the Government believes that, regardless of which test applies, appellant's false denials went to the core of the grand jury's investigation and, had the questions been truthfully answered, their "probative importance" would have prompted "further fruitful investigation."

Jury investigation, namely, the locating of the source of the narcotics" (Appellant's Brief, p. 7).*

POINT II

The additional grand jury testimony of appellant would have caused confusion and was, in any event, further evidence of his guilt.

Appellant contends that his truthful testimony in the grand jury should have been admitted to show that he had not intentionally lied and also to highlight his "limited intelligence" as well as the confusion he urges was created by the ambiguous questions propounded in the grand jury.

There was, first of all, no difficulty, of the kind involved in *Bronston* v. *United States,* 409 U.S. 352 (1973). Certainly, whatever may have been the state of appellant's mind when he initially denied that he "first met Ali at the Flash Inn" on May 24, 1972 and regardless of the literal truth of the answers, the prosecutor "press[ed] another question,"

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* See, e.g., *United States* v. *Stone, supra* (Denial of having met with another party). *United States* v. *Rao,* 394 F.2d 354, 355 (2d Cir.), *cert. denied,* 393 U.S. 845 (1968) (Denied having been in a restaurant on numerous occasions); *United States* v. *Winter,* 348 F.2d 204 (2d Cir.), *cert. denied,* 382 U.S. 955 (1965) (Denied ever having given bribes during a corrupt practices investigation); *United States* v. *Alu, supra* (Denied knowledge of an individual possibly involved in bank robbery); *Goins* v. *United States,* 99 F.2d 147 (4th Cir. 1938), *petition for cert. dismissed,* 306 U.S. 622 (1939) (Denial of ever having gone to Chicago on a drug buying expedition); *Barnes* v. *United States,* 378 F.2d 646 (5th Cir. 1967), *cert. denied,* 390 U.S. 972 (1968) (Denied possession of a gun and money order at time of arrest); *LaRocca* v. *United States,* 337 F.2d 39 (8th Cir. 1964) (Denied ownership of a gun in a grand jury investigation of an assault on a federal officer); *Vitello* v. *United States,* 425 F.2d 416 (9th Cir.), *cert. denied,* 400 U.S. 822 (1970) (Denied having ever placed a bet with a certain bookmaker or knowledge of that bookmaker).

(Id., at 362). Indeed, the prosecutor pressed and reframed his initial question in nearly a dozen different ways, each of which elicited from appellant a clearly false reply calculated to frustrate the grand jury's inquiry.*

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* In his brief, appellant urges that: "An Indictment for perjury can never be based on confusion or on questions lifted out of context" (Appellant's Brief, p. 10). Yet, appellant discusses only the first three of the total of 15 questions and answers in the indictment. The entire 15 questions and answers as as follows:

Q. Did you first meet with them at the Flash Inn on McCombe Ave? A. No, I did not.

Q. Are you saying that on that day, on May 24, 1972, you never met with anybody and discussed with anybody the sale of heroin in the Flash Inn? A. No, I did not.

Q. Are you very sure of that? A. I'm positive of that.

Q. Did you ever meet with Teddy or anyone else and discussed the sale of a kilo of heroin in the Flash Inn? A. No, not that I can remember. I met them in the park and just took the money.

Q. Did you ever say to Teddy that the kilo was coming straight from the Italians and that you could handle any amount of drugs that Teddy or the undercover wanted to purchase, the other party wanted to purchase? A. Not that I could remember.

Q. Did you ever at any time meet with anybody at the Flash Inn on the evening of May 24, 1972? A. No, not that I can remember.

Q. Did you ever agree to pay for the drinks that the people at the Flash Inn had on the evening of the 24th of May after you had discussions for the sale of drugs? A. No, I don't remember that.

Q. Did you ever discuss with anybody on the evening of May 24th on the men's room of the Flash Inn the sale of a kilo of heroin? A. Not that I remember. No, not that I remember.

Q. Did you ever discuss with anybody in the Flash Inn that evening whether they wanted the whole key or only half a key or what? A. No, not that I can remember. All I remember is just getting the money from them.

Q. You remember no negotiations for the money on the Flash Inn on the evening of the 24th? A. No, I don't.

* * * * *

[Footnote continued on following page]

Judge Bartels' decision to exclude portions of the remaining grand jury transcript was proper. The necessity of exclusion, a matter within the discretion of the trial court, see *United States* v. *Capaldo,* 402 F.2d 821, 824 (2d Cir.), *cert. denied,* 394 U.S. 989 (1968) and cases cited therein, was obviously required by the confusion it would have created.

Even if it were assumed that the jury would have taken appellant's other grand jury testimony as truthful (a questionable assumption), it is, in any event, difficult to fathom that it would thereby have concluded his lapse of memory regarding the Flash Inn was anything but intentional. Thus, he so clearly remembered the meetings in front of his wife's store, the meeting at the park, the discussions, the meeting at the Loew's theater, the meeting in the telephone booth, yet he so conveniently forgot about the Flash Inn, the Gold Lounge and the allusion he made to his source and the quantities he could obtain. Finally, his utter inability to recall the names of his earlier suppliers inevitably leads to the conclusion that the revelation of his other grand jury testimony would have been far more damaging to him than its non-disclosure. See, *Gebhard* v. *United States,* 422 F.2d 281, 289 (9th Cir. 1970). Thus, any possible error which may have been committed in refusing to allow the grand jury transcript before the jury was harmless.

Q. And you never discussed the sale of drugs in the Flash Inn on May of this year with anybody? A. No, not that I can remember.

Q. Did you ever negotiate with Teddy or another person in the Flash Inn? A. I don't remember.

Q. Did you ever negotiate for the sale of a kilo in the Flash Inn in May, May 24, 1972? A. I don't remember.

Q. Did you ever negotiate for the sale of a kilo for $27,500 in the Flash in May of this year? A. I don't remember.

Q. Wouldn't you remember something like that now? A. I remember them going to the park, that's all.

POINT III

The slight improprieties in the Assistant's summation do not warrant reversal of the judgment of conviction.

Calling attention to the Assistant's remark in summation that Ali's testimony was uncontradicted, appellant contends that the prosecution thereby commented on his Fifth Amendment privilege to remain silent at his trial.

Although such a comment might raise serious questions of impropriety in other circuits, see *Desmond* v. *United States,* 345 F.2d 225 (1st Cir. 1965; *Rodriguez-Sandoval* v. *United States,* 409 F.2d 529 (1st Cir. 1969); and *Barnes* v. *United States,* 8 F.2d 832 (8th Cir. 1925), no question of impropriety would be recognized by this Court.

The rule in the Second Circuit since the time of *Lefkowitz* v. *United States,* 273 F. 664, 668 (2d Cir.), *cert. denied,* 257 U.S. 637 (1921), has been that if at the close of a case any given point stands uncontradicted, such lack of contradiction is a fact, an obvious truth, upon which counsel are at liberty to dwell. The reasoning of *Lefkowitz* was recently cited approvingly in *United States ex rel. Leak* v. *Follett,* 418 F.2d 1266, 1269 (2d Cir. 1969), *cert. denied,* 397 U.S. 1050 (1970). *Leak* recognized two exceptions to the principle that the Government may comment upon defendant's failure to call witnesses to contradict the prosecutor's case: where the defendant *alone* has information to contradict the Government's case, or where the jury will "naturally and necessarily" interpret the summation to be a comment upon the defendant's silence (*Id.* at 1269). *Accord, United States* v. *Lipton,* 467 F.2d 1161, 1168 (2d Cir. 1972), *cert. denied,* 410 U.S. 927 (1973). The precise holding of *Leak* bears directly on appellant's contention:

> "[W]here the prosecutor confines himself to arguing the strength of his case by stressing the credibility and lack of contradiction of his witnesses, we will not be astute to find in this a veiled comment on the defendant's failure to testify *even if in practical fact, although not in theory, no one else could controvert them.* 418 F.2d at 1270 (emphasis added).

It is clear from the context in which the statement was made that the prosecutor was not focusing the jury's attention on appellant's failure to take the stand. The Assistant had just finished reading the alleged false declarations when he said:

> Now ladies and gentlemen of the jury, the Government has produced and defense counsel has stipulated to the testimony of five witnesses who saw Jackson on that day in the Flash Inn.
>
> Patrolman Ali stated he negotiated for the sale of a kilogram of heroin in the Flash Inn on that evening. *Did you hear one iota of evidence to contradict patrolman Ali's testimony?*
>
> Patrolman Alexander then took the stand and he testified that he was riding shotgun for Ali. He said he saw the defendant going into the Flash Inn and saw him come out. Was Patrolman Alexander in any way shaken on cross-examination? That is for you to determine. I submit to you he was not. (emphasis added) (161).

Surely, the jury could not have taken the prosecutor to be commenting on appellant's failure to testify. The statement that Ali's testimony was uncontradicted was made wholly within the context of the state of the record, upon which there was no dispute that appellant's denials in the

grand jury were false.* See, *Jordan* v. *United States,* 324 F.2d 178 (5th Cir. 1963).**

Appellant also urges that an impropriety was committed when the prosecutor, in seeking to impress upon the jury the memorable character of the meeting at the Flash Inn, stated:

> That meeting on May 24 was not a social gathering; going to mother's house for a turkey dinner or a meeting at the Knights of Columbus for a dance. It was not a social occasion. It was not the same as a social gathering. It was an association for delivery of a kilogram of heroin (163).

Quite certainly, the prosecutor's comment was a rejoinder to the entire theme of defense counsel's summation which was to stress what the defense contended was an incidental event. See, *United States* v. *DeAngelis,* 490 F.2d 1004, 1011 (2d Cir. 1974) (Mansfield, *J.,* concurring).

The remaining objections to the prosecutor's summation are trivial, dealing as they do with the style of the Assistant. Those stylistic errors were promptly corrected by the District Court, see *United States* v. *Miller,* 478 F.2d 1315, 1318 (2d Cir.), *cert. denied,* 414 U.S. 851 (1973), and no possible prejudice could have resulted.

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* Even were the Government to concede that the comment of the Assistant United States Attorney here was ambiguous, nonetheless an instruction to the jury would suffice to avoid possible prejudice; under such circumstances, a failure to make an immediate objection and request curative instructions precludes defendant from raising the issue on appeal. *United States* v. *Nasta,* 398 F.2d 283, 285 (2d Cir. 1968).

** The Government does not quite understand appellant's citation to *United States* v. *Semensohn,* 421 F.2d 1206 (2d Cir. 1970), a case in which the defendant testified and in which there was an issue of credibility.

Form No. USA-52a-6a
(Rev. 1-29-71)

POINT IV

Appellant's sentence should not be disturbed.

There is nothing in the record to indicate that the sentence imposed by Judge Bartels was excessive, let alone so excessive as to warrant this Court to discard a long standing rule and review its propriety. The Government would note, however, that contrary to the assertion in appellant's brief (at page 17) that he has no prior convictions, it appears that appellant was convicted in 1970 of criminal possession of a dangerous drug in the Bronx Supreme Court. At the oral argument herein, the Government will provide the Court with a certified record of that conviction.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

June 11, 1974

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COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

DEBORAH J. AMUNDSEN, being duly sworn, says that on the 13th day of June 1974, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a~~x~~ two copies of the brief for the appellee of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Lenefsky, Gallina, Mass & Hoffman, Esqs.
30 Broad Street
New York, New York 10004

Sworn to before me this
13th day of June 1974

Irene B. Cohen

IRENE B. COHEN
Notary Public, State of New York
No. 24-0583104
Qualified in Kings County
Certificate filed in New York County
Commission Expires [illegible]

Deborah J. Amundsen

DEBORAH J. AMUNDSEN

AFFIDAVIT OF PERSONAL SERVICES

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,
_____, 19____

_____
United States Attorney,
Attorney for _____

To:
_____
_____
_____
Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____duly entered herein on the ____ day of _____
_____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,
_____, 19____
_____
United States Attorney,
Attorney for _____

To:
_____
_____
_____
Attorney for _____

_____ Action No._____

UNITED STATES DISTRICT COURT
Eastern District of New York

—Against—

_____
United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
_____is hereby admitted.
Dated: _____, 19____

_____
Attorney for _____

FPI-LC-5M-8-73-7355